

AMENDED IN ASSEMBLY APRIL 15, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1469

**Introduced by Committee on Public Safety (Honda (Chair),
Cunneen (Vice Chair), Keeley, Oller, Romero, and
Washington)**

February 26, 1999

An act to ~~amend Section 17 of~~ *add Sections 1208.2 and 1208.3*
to the Penal Code, relating to punishment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1469, as amended, Committee on Public
Safety. Punishment: ~~classification of offenses—work furlough
programs.~~

*Existing law, repealed by its own terms as of January 1, 1999,
did all of the following:*

*(1) Provided procedures that, among other things,
authorize a board of supervisors that implements a work
furlough program, electronic home detention program, or
county parole program, as specified, to prescribe a program
administrative fee and an application fee, that includes
equipment and supervision costs, to be charged by the
administrator based on the prisoner's ability to pay.*

*(2) Exempted privately operated home detention
programs from specified maximum limits on the
administrative fee prescribed by the board of supervisors to
be paid by each home detention participant.*

(3) Required, among other things, the administrator of a work furlough or home detention program, as specified, to ensure that these fee provisions are contained in any contract with a private agency or entity to provide specified program services.

(4) Prohibited the administrator of a program specified in (1) above from considering the prisoner's ability to pay for purposes of granting or denying participation in any of the programs and provided that this provision does not prohibit the administrator from verifying certain information relating to the prisoner's employment.

This bill would reenact these provisions.

~~Under existing law, crimes are classified as felonies, misdemeanors, and infractions. Existing law also subjects infractions to specified procedures.~~

~~This bill would make nonsubstantive, technical changes to this provision.~~

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 17 of the Penal Code is amended~~

2 *SECTION 1. Section 1208.2 is added to the Penal*
3 *Code, to read:*

4 1208.2. (a) (1) *This section shall apply to individuals*
5 *authorized to participate in a work furlough program*
6 *pursuant to Section 1208, or to individuals authorized to*
7 *participate in an electronic home detention program*
8 *pursuant to Section 1203.016, or to individuals authorized*
9 *to participate in a county parole program pursuant to*
10 *Article 3.5 (commencing with Section 3074) of Chapter*
11 *8 of Title 1 of Part 3.*

12 (2) *As used in this section, as appropriate,*
13 *“administrator” means the sheriff, probation officer,*
14 *director of the county department of corrections, or*
15 *county parole administrator.*

16 (b) (1) *A board of supervisors which implements*
17 *programs identified in paragraph (1) of subdivision (a),*
18 *may prescribe a program administrative fee and an*

1 application fee, that together shall not exceed the pro rata
2 cost of the program to which the person is accepted,
3 including equipment, supervision, and other operating
4 costs, except as provided in paragraph (2).

5 (2) With regard to a privately operated electronic
6 home detention program pursuant to Section 1203.016,
7 the limitation, described in paragraph (1), in prescribing
8 a program administrative fee and application fee shall not
9 apply.

10 (c) The correctional administrator, or his or her
11 designee, shall not have access to a person's financial data
12 prior to granting or denying a person's participation in,
13 or assigning a person to, any of the programs governed by
14 this section.

15 (d) The correctional administrator, or his or her
16 designee, shall not consider a person's ability or inability
17 to pay all or a portion of the program fee for the purposes
18 of granting or denying a person's participation in, or
19 assigning a person to, any of the programs governed by
20 this section.

21 (e) For purposes of this section, "ability to pay" means
22 the overall capability of the person to reimburse the costs,
23 or a portion of the costs, of providing supervision and shall
24 include, but shall not be limited to, consideration of all of
25 the following factors:

26 (1) Present financial position.

27 (2) Reasonably discernible future financial position. In
28 no event shall the administrator, or his or her designee,
29 consider a period of more than six months from the date
30 of acceptance into the program for purposes of
31 determining reasonably discernible future financial
32 position.

33 (3) Likelihood that the person shall be able to obtain
34 employment within the six-month period from the date
35 of acceptance into the program.

36 (4) Any other factor that may bear upon the person's
37 financial capability to reimburse the county for the fees
38 fixed pursuant to subdivision (b).

39 (f) The administrator, or his or her designee, may
40 charge a person the fee set by the board of supervisors or

1 any portion of the fee and may determine the method and
2 frequency of payment. Any fee the administrator, or his
3 or her designee, charges pursuant to this section shall not
4 in any case be in excess of the fee set by the board of
5 supervisors and shall be based on the person's ability to
6 pay. The administrator, or his or her designee, shall have
7 the option to waive the fees for program supervision
8 when deemed necessary, justified, or in the interests of
9 justice. The fees charged for program supervision may be
10 modified or waived at any time based on the changing
11 financial position of the person. All fees paid by persons
12 for program supervision shall be deposited into the
13 general fund of the county.

14 (g) No person shall be denied consideration for, or be
15 removed from, participation in any of the programs to
16 which this section applies because of an inability to pay all
17 or a portion of the program supervision fees. At any time
18 during a person's sentence, the person may request that
19 the administrator, or his or her designee, modify or
20 suspend the payment of fees on the grounds of a change
21 in circumstances with regard to the person's ability to
22 pay.

23 (h) If the person and the administrator, or his or her
24 designee, are unable to come to an agreement regarding
25 the person's ability to pay, or the amount which is to be
26 paid, or the method and frequency with which payment
27 is to be made, the administrator, or his or her designee,
28 shall advise the appropriate court of the fact that the
29 person and administrator, or his or her designee, have not
30 been able to reach agreement and the court shall then
31 resolve the disagreement by determining the person's
32 ability to pay, the amount which is to be paid, and the
33 method and frequency with which payment is to be
34 made.

35 (i) At the time a person is approved for any of the
36 programs to which this section applies, the administrator,
37 or his or her designee, shall furnish the person a written
38 statement of the person's rights in regard to the program
39 for which the person has been approved, including, but
40 not limited to, both of the following:

1 (1) The fact that the person cannot be denied
2 consideration for or removed from participation in the
3 program because of an inability to pay.

4 (2) The fact that if the person is unable to reach
5 agreement with the administrator, or his or her designee,
6 regarding the person's ability to pay, the amount which
7 is to be paid, or the manner and frequency with which
8 payment is to be made, that the matter shall be referred
9 to the court to resolve the differences.

10 (j) In all circumstances where a county board of
11 supervisors has approved a program administrator, as
12 described in Sections 1203.016 and 1208, to enter into a
13 contract with a private agency or entity to provide
14 specified program services, the program administrator
15 shall ensure that the provisions of this section are
16 contained within any contractual agreement for this
17 purpose. All privately operated home detention
18 programs shall comply with all appropriate, applicable
19 ordinances and regulations specified in subdivision (a) of
20 Section 1208.

21 SEC. 2. Section 1208.3 is added to the Penal Code, to
22 read:

23 1208.3. The administrator is not prohibited by
24 subdivision (c) of Section 1208.2 from verifying any of the
25 following:

26 (a) That the prisoner is receiving wages at a rate of pay
27 not less than the prevailing minimum wage requirement
28 as provided for in subdivision (c) of Section 1208.

29 (b) That the prisoner is working a specified minimum
30 number of required hours.

31 (c) That the prisoner is covered under an appropriate
32 or suitable workers' compensation insurance plan as may
33 otherwise be required by law.

34 The purpose of the verification shall be solely to insure
35 that the prisoner's employment rights are being
36 protected, that the prisoner is not being taken advantage
37 of, that the job is suitable for the prisoner, and that the
38 prisoner is making every reasonable effort to make a
39 productive contribution to the community. ~~to read:~~

1 ~~17. (a) A felony is a crime which is punishable with~~
2 ~~death or by imprisonment in the state prison. Every other~~
3 ~~crime or public offense is a misdemeanor except those~~
4 ~~offenses that are classified as infractions.~~

5 ~~(b) When a crime is punishable, in the discretion of the~~
6 ~~court, by imprisonment in the state prison or by fine or~~
7 ~~imprisonment in the county jail, it is a misdemeanor for~~
8 ~~all purposes under the following circumstances:~~

9 ~~(1) After a judgment imposing a punishment other~~
10 ~~than imprisonment in the state prison.~~

11 ~~(2) When the court, upon committing the defendant~~
12 ~~to the Youth Authority, designates the offense to be a~~
13 ~~misdemeanor.~~

14 ~~(3) When the court grants probation to a defendant~~
15 ~~without imposition of sentence and at the time of~~
16 ~~granting probation, or on application of the defendant or~~
17 ~~probation officer thereafter, the court declares the~~
18 ~~offense to be a misdemeanor.~~

19 ~~(4) When the prosecuting attorney files in a court~~
20 ~~having jurisdiction over misdemeanor offenses a~~
21 ~~complaint specifying that the offense is a misdemeanor,~~
22 ~~unless the defendant at the time of his or her arraignment~~
23 ~~or plea objects to the offense being made a misdemeanor,~~
24 ~~in which event the complaint shall be amended to charge~~
25 ~~the felony and the case shall proceed on the felony~~
26 ~~complaint.~~

27 ~~(5) When, at or before the preliminary examination or~~
28 ~~prior to filing an order pursuant to Section 872, the~~
29 ~~magistrate determines that the offense is a misdemeanor,~~
30 ~~in which event the case shall proceed as if the defendant~~
31 ~~had been arraigned on a misdemeanor complaint.~~

32 ~~(c) When a defendant is committed to the Youth~~
33 ~~Authority for a crime punishable, in the discretion of the~~
34 ~~court, by imprisonment in the state prison or by fine or~~
35 ~~imprisonment in the county jail, the offense shall, upon~~
36 ~~the discharge of the defendant from the Youth Authority,~~
37 ~~thereafter be deemed a misdemeanor for all purposes.~~

38 ~~(d) A violation of any code section listed in Section 19.8~~
39 ~~is an infraction subject to the procedures described in~~
40 ~~Sections 19.6 and 19.7 when either of the following occur:~~

1 ~~(1) The prosecutor files a complaint charging the~~
2 ~~offense as an infraction unless the defendant, at the time~~
3 ~~he or she is arraigned, after being informed of his or her~~
4 ~~rights, elects to have the case proceed as a misdemeanor.~~

5 ~~(2) The court, with the consent of the defendant,~~
6 ~~determines that the offense is an infraction in which~~
7 ~~event the case shall proceed as if the defendant had been~~
8 ~~arraigned on an infraction complaint.~~

9 ~~(c) Nothing in this section authorizes a judge to~~
10 ~~relieve a defendant of the duty to register as a sex~~
11 ~~offender pursuant to Section 290 if the defendant is~~
12 ~~charged with an offense for which registration as a sex~~
13 ~~offender is required pursuant to Section 290, and for~~
14 ~~which the trier of fact has found the defendant guilty.~~

